Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1998

State, ex rel, Steven Mantz and Debra Mantz

Petitioners,

v.

Charles P. Dykman, Margaret J. Vergeront and
David G. Deininger,
acting court of appeal judges

Respondents.

PETITION FOR WRIT OF CERTIORARI FROM DISTRICT IV COURT OF APPEALS STATE OF WISCONSIN

Steven Mantz
Debra Mantz
758 Eastern Avenue
West Bend, WI 53095
(414) 338-3669

5899

QUESTIONS PRESENTED

(A) Does the mere filing of a congressionally created *Notice of Removal* per Title 28U.S.C.1441 et seq., by a defendant in a pending state court action automatically bestow federal jurisdiction to a congressionally created United States federal district court in which the petitioner, respondent and real property in question are within the jurisdiction of a State, absent the showing of constitutional authority warranting said removal by the acting United States federal district court judge thereof, become animate?

(B) Does the attorney general for the state of Wisconsin have a constitutional obligation and/or statutory authorization to represent a duly elected, tax paid, county officer in any court of the several States and/or United States district court?

(C) Does the petitioner maintain an absolute right of access to the courts of the several States for redress of grievance?

(D) Is the petitioner entitled to Ten Thousand Dollars ($10,000.00) in "sanction" against the respondents, jointly and severally, due to their gross negligence for their willful and deliberate attempt to subject the petitioners to a foreign jurisdiction absent constitutional authority to do so; and their contention that the attorney general has authority to represent a duly elected county judge?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING 1

JURISDICTIONAL STATEMENT 1

STATEMENT OF THE CASE 2

1. The Transaction. 2

REASONS FOR GRANTING THE PETITION 4

A. Addressing the Issue of a Motion of Removal 4

B. Limited Duties of Attorney General 14

C. Right of Access to the Court 21

REQUEST FOR SANCTIONS 22

CONCLUSION 23

RELIEF 24

TABLE OF AUTHORITIES

Page

CASES

McIlvaine v. Coye's Lessee, 8 U.S. 212 (1808) 5

Harcourt v. Gaillard, 25 U.S. 526 (1827) 6

Fort Leavenworth R. Co., v. Lowe,
114 U.S. 525, 529 (1885) 8

McCulloch v. Maryland, 17 U.S.C. 316, 403 (1819) 9, 16

Martin v. Hunters Lessee Va., 14 U.W. 304 (1816) 11

Caha v. United States, 152 U.S. 211, 215 (1814) 11

United States v. Bevans, 16 U.S. 336, 338 (1818) 11, 12

In Re O'Connor, 37 Wis. 379 (1875). 12

United States v. San Francisco Bridge Co.,
88 Fed. 891, 893-894 (1898) 12

Pennoyer v. Neff, 95 U.S. 714 (1877). 13

Van Alstyne, Roberts, 1974 WLR 721, 740-744. ..... 15, 17

Yick Wo v. Hopkins, 118 U.S. 356 (1886). 17

State ex rel Shevin v. Yarborough,
257 So.2d 891, 896 (1971) 18

Bollhoffer v. Wolke, 66 Wis.2d 144, 233 N.W.2d 902 20

Crandall v. Nevada, 6 Wall. 36 (73 U.S. XVIII, 745) 21

Page

STATUTES

Constitution for the United States of America:
Article III, Section 2, Clause 2 1
First Amendment 1, 2
Fifth Amendment 2
Article I, Section 8, Clause 17 7
Article III, Section 1 10

Articles of Confederation, Article II 6

Wisconsin Constitution, Article II 13

Wis. Stat. §165.25 and §165.25(1) 15

Wis. Stat. §59.42(2)(b)1 19

Page

OTHER AUTHORITIES

The Federalist, Essay No. 43 9

Declaration of Independence 16

PARTIES TO THE PROCEEDING

The name of the parties directly or indirectly involved in this litigation are: acting appellate court judges Charles P. Dykman, Margaret J. Vergeront and David G. Deininger; acting circuit court judge Michael T. Kirchman; acting attorney general James E. Doyle; and acting United States district court judge John C. Shabaz.

JURISDICTIONAL STATEMENT

Petitioners filed a "Petition for Review" with the supreme Court of Wisconsin on September 8, 1998. The court simply denied said petition on December 8, 1998 (App., Infra, 26a).

Jurisdiction is bestowed upon this Court, as set forth in Article III, Section 2, Clause 2 of the Constitution for the United States of America, to wit:

> "In all other Cases before mentioned, the supreme Court ***shall have appellate Jurisdiction***, both as to the Law and Fact,. . . "

and the First Amendment of the Constitution for the United States of America:

> "Congress shall make no law . . . prohibiting . . . the right of the people . . . ***to petition the Government for a redress of grievances***,"

and the Fifth Amendment of the Constitution for the United States of America:

> "No person shall be . . . deprived of life, liberty, or property ***without due process of law***. . . ."

In support thereof, *Marbury v. Madison*, 5 U.S. 137 (1803):

> "Where individual rights depend on a duly established by law, there is a remedy that must be judicially enforced to protect the injured party."

STATEMENT OF THE CASE

1. The Transaction.

On March 23, 1998, petitioners filed with the clerk of court in Crawford county, state of Wisconsin, a document entitled, "EMERGENCY PETITION FOR DECLARATORY JUDGMENT" (App., Infra, 28a). A fee of $180.00 was charged for said filing and case number 98-CV-39 was attached thereto.

On April 23, 1998, the petitioners set forth a letter to acting circuit court judge Michael T. Kirchman (hereinafter referred to as "Kirchman"), requesting a time and date certain for adjudication of their petition (App., Infra, 34a).

On April 23, 1998, Kirchman sent a letter to the petitioners (App., Infra, 36a) indicating that said case had been removed to the United States federal district court.

Petitioners filed a "Petition for Writ of Mandamus" (App., Infra, 37a) in the court of appeals, District IV commanding Kirchman to adjudicate the petitioners' "Emergency Petition for Declaratory Judgment" pursuant to Wis. Stat. §806.04. The three judge panel ordered Kirchman to respond. However, the Wisconsin attorney general answered for Kirchman. Petitioners filed a "Motion to Strike . . ." (App., Infra, 43a).

On August 11, 1998, the appellate court denied the petitioners' Petition for Writ of Mandamus, issuing an Order (App., Infra, 48a), and erroneously concluding "there is no basis for this court to exercise its supervisory authority".

On August 19, 1998, the appellate court denied the Petitioners' Motion to Strike the acting Wisconsin attorney general's ability to represent Kirchman on appeal (App., Infra, 51a).

Petitioners thereinafter sought review thereof to the supreme Court of Wisconsin. On December 8, 1998, the supreme Court of Wisconsin simply denied the petitioners' Petition For Review at a cost of $150.00 to the petitioners (App., Infra., 53a).

REASONS FOR GRANTING THE PETITION

A. Addressing the Issue of a Motion of Removal

Petitioners contend the "litigants", "the real property" and "subject matter" of their "Emergency Petition for Declaratory Judgment" *is not* within any congressionally created federal jurisdiction subject to adjudication by a congressionally created Article I court of the United States and barred from any assertion thereof, pursuant to Amendment X of the Constitution for the United States of America. The national government *acquired from the people* by cession, a limited territory in Washington, D.C., to wit, Article I, Section 8, Clause 17 of the Constitution for the United States of America, known to all the world as the United States. The United States is to have and to hold limited jurisdiction within said specific geographic area and is estopped from exercising any authority beyond the limits thereof, except in limited cases as stated therein. In order to prevent any and all misconstruction or abuse of the newly assigned enumerated powers of the United States Amendment X was annexed thereto as a means of restraining said government from engaging in activities other than those expressly authorized within Article I, Section 8, Clause 17; and/or from impeding upon the well established enumerated powers of the several States and/or personal liberties of the inhabitant thereof. The architects of the Constitution for the

United States of America were very clear in recognizing the enumerated powers of the State. The term "State/state" is used numerous times throughout the Constitution for the United States of America signifying absolute independence and sovereignty from the newly fashioned federal government. In examining this issue, this court can take judicial notice of the Declaration of Independence. The legal effect of the Declaration of Independence was to make each new State a separate and independent sovereign over which there was no other government of superior power or jurisdiction. This was clearly established in *McIlvaine v. Coxe's Lessee*, 8 U.S. 212 (1808), where it was held:

> "This opinion is predicated upon a principal which is believed to be undeniable, that the several states which composed this Union, so far at least as regarded their municipal regulations, became entitled, from the time when they declared themselves independent, to all the rights and powers of sovereign states, and that they did not derive them from concessions made by the British king. The treaty of peace contains a recognition of their independence; not a grant from it. From hence it results, that the laws of the several state governments were the laws of sovereign states, and as such were obligatory upon the people of such state, from the time they were enacted."

And a further expression thereof is held verbatim in *Harcourt v. Gaillard*, 25 U.S. 526 (1827), where the court stated:

> "There was no territory within the United States that was claimed in any other right than that of some one of the confederated states; therefore, there could be no acquisition of territory made by the United States distinct from or independent of some one of the states. . . . Each declared itself sovereign and independent, according to the limits of its territory. . . . The soil and sovereignty within their acknowledged limits were as much theirs at the declaration of independence as at this hour."

Thus, unequivocally, in July, 1776, the people in the new States possessed all sovereignty, power, and jurisdiction overall the soil and persons in their respective territorial limits. This condition of supreme sovereignty of each state over all property and persons within the borders thereof continued notwithstanding the adoption of the Articles of Confederation. In Article II of such Articles, it was expressly stated:

> "Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

As the history of the confederation government has shown, the people in each state were indeed sovereign and independent to the

degree that it made the central government created by the confederation fairly ineffectu'. These defects of the confederation government strained the relations between and among the several states and the remedy became the calling of a constitutional convention.

The representatives which assembled in Philadelphia in May, 1787, to attend the Constitutional Convention met for the primary purpose of improving the commercial relations among the people in the several states, although the product of the convention produced more than this. But, no intention was demonstrated for the people in the states to surrender any degree the jurisdiction so possessed by them at that time, and indeed the Constitution, as finally drafted, continued the same territorial jurisdiction of the states as existed under the Articles of Confederation. The essence of this retention of state jurisdiction is embodied in Article I, Section 8, Clause 17 of the Constitution for the United States of America:

> "To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of a particular state, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the states in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

Research of this unambiguous constitutional provision is duly spelled out in *Fort Leavenworth R. Co. v. Lowe*, 114 U.S. 525, 529 (1885). The reason for the inclusion of this clause in the Constitution was and is obvious. Under the Articles of Confederation, the people in the states retained absolute sovereignty and jurisdiction within their respective borders. The congress under the Articles of Confederation was merely a body which represented and acted as agents of the separate states for external affairs, and had no jurisdiction within the States. This defect in the Articles made the Confederate congress totally dependant upon any given State for protection, and this dependency did, in fact, cause embarrassment for the congress. During the Revolutionary War, while the congress met in Philadelphia, a body of mutineers from the Continental Army surrounded the congress, and chastised and insulted the members thereof. The governments of both Philadelphia and Pennsylvania proved themselves powerless to remedy the situation, and the congress was forced to flee first to Princeton, New Jersey, and finally to Annapolis, Maryland. Thus, this clause was inserted into the Constitution to give limited jurisdiction to congress over it's capital not to exceed ten mile square, and such other places as congress might purchase for forts, magazines, arsenals and other needful buildings wherein the state ceded jurisdiction of such lands to the federal government. Other than in these specific areas, this

clause of the Constitution did not operate to extend any further jurisdiction by the newly fashioned federal government. The sole purpose of this provision was to enable the newly established federal government to maintain complete authority at the seat of the government by virtue of its limited, but general supremacy. *(See The Federalist Essay Number 43 for reference thereto.)*

In *McCulloch v. Maryland*, 17 U.S. 316, 403 (1819), chief justice John Marshall, an American jurist elected to the Virginia legislature, and in 1788 to the Virginia convention where he was influential in the adoption of the Constitution for the United States of America, entered congress in 1799 and in 1801 was nominated chief justice for the supreme Court of the United States, delivered the opinion of the court:

> "The Convention which framed the constitution was indeed elected by the State legislatures. But the instrument . . . was submitted to the people . . . . It is true, they assembled in their several States – and where else should they have assembled? No ***political dreamer*** was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass.

The convention specifically set forth the boundaries for the newly fashioned federal government and provided them with constitutional authority to police and maintain their general supremacy, but in no way had the sovereignty and jurisdiction of the States been diminished.

In addressing judicial powers of the newly fashioned United States, one must take judicial notice of Article III, Section 1 of the Constitution for the United States of America:

> "the judicial power of the United States, shall be vested in ***one supreme Court,*** and in such inferior Courts as the Congress may from time to time ordain and establish."

Article III, Section 2 sets forth cases subject to federal adjudication in which the constitutionally created supreme Court of the United States maintains "original Jurisdiction" and/or "appellate Jurisdiction". In addition thereto, Article III, Section 1 also provided the newly fashioned Congress with an enumerated power to establish congressionally created inferior courts of limited jurisdiction within their limited geographical territories *(Article I, Section 8, Clause 17)* to ordain as deemed necessary for enforcement of congressional created rules, regulations and/or policies involving the affairs of the United States in which said courts maintain general and exclusive jurisdiction. Examples thereof are the *United States Federal Court of Claims, United States District Court for the District of Columbia,* and the *District of Columbia Superior Court.* Article I congressionally created federal courts are acts of Congress, limited to their respective territorial application to handle the newly created responsibilities of the United States government. Without hesitation the constitutionally created supreme Court of the United States has

fully recognized the limited powers of the Article I courts, to wit, *Martin v. Hunters Lessee Va.*, 14 U.S. 304 (1816) and/or *Caha v. United States*, 152 U.S. 211, 215 (1894). Analyzing the term Article I federal jurisdiction of the United States, one must turn to the stare decisis of the constitutionally created supreme Court of the United States decision in *United States v. Bevans*, 16 U.S. 336, 338 (1818) concluding:

> "It is observable, that the power of exclusive legislation is united with cession of territory, which is to be the free act of the states. It is difficult to compare the two sections together, without feeling a conviction, not to be strengthened by any commentary on them, that, in describing the judicial power, the framers of our constitution had not in view any cession of territory, or, which is essentially the same, of general jurisdiction."

In *Bevans*, the supreme Court emphatically recognized the long, well established principle that congressionally created federal jurisdiction extends only over the areas wherein it possess the power of exclusive jurisdiction, and this is a principle incorporated into all subsequent decisions regarding the extent of federal jurisdiction. To hold otherwise would destroy the purpose, intent and meaning of the Tenth Amendment. With regard to state jurisdiction, the *Bevans* decision stated:

> "What, then, is the extent of jurisdiction which a state possesses? We answer, without hesitation, the jurisdiction of a state is co-extensive with its territory; co-extensive with its legislative power."

In 1875, the justices of the supreme Court of Wisconsin recognized the absolute supremacy of state jurisdiction and sovereignty and protected the state from any and all attempts to impede said jurisdiction and sovereignty by use of fictitious and scandalous implications of political jurisdiction, to wit, *In Re O'Conner*, 37 Wis. 379 (1875):

> "The rights of sovereignty are never to be taken away by implication."

A subsequent case expounding the nature of authority and jurisdiction limiting the powers delegated to the United States government is found in *United States v. San Francisco Bridge Co.*, 88 Fed. 891, 893-894 (1898), concluding:

> "it is not alleged in the information, nor does the fact otherwise appear, that the land upon which the new San Francisco post office is being constructed was purchased by the United States with the consent of the state or that political jurisdiction over the same has otherwise ceded to the United States by the state of California. The state retains complete and exclusive political jurisdiction over such land, etc."

The basic and fundamental principal is, "that every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory". As a consequence, every state has the power

to determine for itself the civil status and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations enforced; and also to regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed and transferred, to wit, *Pennoyer v. Neff*, 95 U.S. 714 (1877).

As all the world knows, prior to Wisconsin becoming a state, it was part of the Northwest Territory. Wisconsin became a *territory of the United States* in 1836; however, in 1848 Wisconsin *achieved statehood* and *ceased to be a territory of the United States*, to wit, *Article II*, of the Wisconsin Constitution:

> "State boundary. Section 1. It is hereby ordained and declared that the state of Wisconsin doth consent and accept of the boundaries prescribed in the act of congress entitled *"An act to enable the people of Wisconsin territory to form a constitution and state government, and for the admission of such state into the Union,"* approved August sixth, one thousand eight hundred and forty-six, . . ."

Accordingly, at all times relevant to the facts set forth in this petition, the circuit courts in the state of Wisconsin are constitutional courts of absolute "original and general jurisdiction" within their respectable geographical area; to wit, Article VII, Section 8 of the Wisconsin Constitution, *except* as exclusively

specified in Article III, Section 2 of the Constitution for the United States of America in which the constitutionally created supreme Court of the United States *acquired* "original jurisdiction" thereof. Consequently, any and all congressionally created United States federal district courts which existed prior to Wisconsin becoming a state, thereinafter became obsolete in their entirety within the geographical area of the state; or remain merely for enforcement of Article I, Section 8, Clause 17, provisional application in which the United States acquired property exclusively by cession from the state and a consideration therefor.

Wherefore, the respondent's decision "there is no basis for this court to exercise its supervisory authority" in reference to the filing of a "Notice of Removal" has no basis in fact or law and is accordingly groundless, thus resulting in a miscarriage of justice and denial of due process.

B. Limited Duties of Attorney General.

At all times relevant to this petition, the acting Wisconsin attorney general James E. Doyle (hereinafter referred to as "Doyle"), is a duly elected, tax paid, constitutional state employee of the people. The circuit court judge, Michael T. Kirchman (hereinafter referred to as "Kirchman"), is a duly elected, tax paid, constitutional county officer of the people in Crawford county. The petitioners contend the legislative duties of Doyle are set forth

in Chapter 165 of the Wisconsin Statutes and specifically spelled out in *Van Alstyne, Roberts*, 1974 WLR 721; and is adopted hereinafter as if fully set forth. Review of the mentioned provisions do not consist of private representation of any duly elected, tax paid, constitutional county officer. Representation is reserved to actions in which the state is a party, directly or indirectly, to wit:

> 165.25 **Duties of department of justice.** The department of justice shall:
>
> 165.25(1)
>
> (1) **Represent state.** Except as provided in s. 978.05(5), appear for the state and prosecute or defend all actions and proceedings, civil or criminal, in the court of appeals and the supreme court, in which the state is interested or a party, and attend to and prosecute or defend all civil cases sent or remanded to any circuit court in which the state is a party; and, if requested by the governor or either house of the legislature, appear for and represent the state, any state department, agency, official, employe or agent, whether required to appear as a party or witness in any civil or criminal matter, and prosecute or defend in any court or before any officer, any cause or matter, civil or criminal, in which the state or the people of the state may be interested. The public service commission may request under s. 196.497(7) that the attorney general intervene in

> federal proceedings. All expenses of the proceedings shall be paid from the appropriation under s. 20.455(1)(d).

The ultimate illusion set forth in Wisconsin Statute §165.25(1) is the true and defined meaning of "state". In the formation of Government of this nation, one must understand the basic fundamental principal of government: (1) the people existed prior to the government; (2) the people created government in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general welfare, and secure the Blessings of Liberty to ourselves and our Posterity. For it is written in the Declaration of Independence:

> " . . . men are created with certain unalienable Rights . . . and that to secure these rights, governments are instituted. These governments derive their just powers from the consent of the governed."

The supreme Court has recognized the characteristics of this philosophical array in *McCulloch v. Maryland*, 17 U.S. 316 (1819):

> "The government of the Union is a government of the People; it emanates from them; its powers are granted by them; and are to be exercised directly on them, and for their benefit."

There is without hesitation, no doubt this government exists for the benefit of the people and/or otherwise known as the state. That the

duly elected and/or duly appointed constitutional officers thereof exist for this honorable purpose, absolute; to wit, *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Thus, the statutory duties of the attorney general are limited to cases in which the "state" is interested or a party, directly or indirectly.

In an attempt to set forth the exclusive duties of the attorney general, we must look to a recent survey by the National Association of Attorneys General for a summary involving the common law powers of the state attorney general as reflected in the holdings of the various state appellate courts: (1) Broad powers to institute civil suits to *protect the public interest*; (2) Power to attach the constitutionality of *legislative or administrative* actions; (3) Power to *intervene in rate cases*; (4) Power to *proceed against public officials* in quo warranto and mandamus actions; (5) Power to *revoke corporate charters*; (6) Power to abate public nuisances including *air and water pollution*; (7) Power to *abate offenses against morality* (again based upon the public nuisances concept); (8) Power to *enforce charitable trusts*; (9) Power to *intervene in will contests*; (10) Power to *represent state agencies*. A complete list of the Wisconsin attorney general's duties is set forth in *Van Alstyne, Roberts*, 1974 WLR 740-744. The limitations and application of the statutes are limited to the term "person" as set forth in the Wisconsin Statutes under Chapter 990, *Construction of Statutes*, at §990.01(26):

> "Person. "Person" includes all partnerships, associations and bodies politic or corporate."

The statutes are quite clear as to the application for attorney general representation. He is elected by the people; he is entrusted by them with common-law power to legally represent them or some of them in matters deemed by him to affect the public interest. He has a discretionary duty under the common law rarely modified by statute to protect the public interests of any of the people who elected him; to wit, *State ex rel Shevin v. Yarborough*, 257 So.2d 891, 896 (1971). Ultimately, he is the chief administrative officer for the "state", and the executive officer for enforcement of legislative enactments upon agencies created by or with the permission thereof in the interest of the "state"; and/or state chartered corporations operating in the state of Wisconsin, for profit, in violation of the statutory provisions regulating their activities.

It is unclear as to why the respondents did not grant the petitioners' Motion to Strike any and all representation of Kirchman by Doyle. The respondents' contention, absent any findings of facts and conclusions of law, Kirchman was acting in his official capacity, thus representation by Doyle is warranted is contrary to well established law. The respondents' dilemma is easily diminished since their personal dictum creates a conflict of interest and/or conflict of law. This scenario would allow a state attorney general to bring suit in the name of the STATE OF

WISCONSIN as the plaintiff, he would be the prosecutor, and a state judge would be assigned thereto. The end result is persecution in a "star chambers".

Petitioners research reveals the statutory provisions for Kirchman to be represented in a civil suit is provided in Wisconsin Statute §59.42(2)(b)1 by the Wisconsin legislature:

> "**Prosecute and defend all civil actions, proceedings, applications and motions in any court**, commission, board, tribunal or body in any jurisdiction of this or other states or of the nation in which the county or any board, commission, committee or officer thereof is interested or a party by virtue of the office; and shall in like manner represent or assist in representing the state, or any commission, board, agency or tribunal of the state, in such civil actions or proceedings when requested to do so by the attorney general or when the district attorney of the county is required by any statute to do so.

The Petitioners contend that upon the filing of the "Emergency Petition for Declaratory Judgment" *State ex rel.*, they have invoked the sovereign powers of the state. That this proceeding is instituted in the name and behalf of the "state", but on the information and at the instigation of an individual who has a private interest in the matter. That the acting attorney general James E. Doyle was duly served via certified mail, number Z 097402 202 on March 23, 1998, with said petition as a prerequisite

for implementing jurisdiction for declaratory judgment; to wit, ***Bollhoffer v. Wolke***, 66 Wis.2d 144, 223 N.W.2d 902. The Wisconsin legislature dictates in Wisconsin Statute §1.01:

> "The governor, and all subordinate officers of the state, ***shall maintain and defend its sovereignty, and jursdiction.***"

Petitioners then sought a Writ of Mandamus in the appeals court against Kirchman ***State ex rel*** and the attorney general, after being served with the petitioners'/state's petition for Declaratory Judgment, voluntarily filed papers on his behalf without any constitutional or statutory authority to do so contending the Notice of Removal is valid in contempt of the Constitution for the United States of America, Wisconsin Constitution and Wisconsin Statutes. Ultimately, the attorney general abandons his common-law obligation to the "state" in an attempt to justify Kirchman's actions. The end result, criminal trespass and treason.

Wherefore, in the event the duly elected county judge seeks representation in a civil action in which he is personally named, the corporation counsel is authorized to represent the county and/or any agent thereof, not the Wisconsin attorney general as set forth herein.

Accordingly, the respondents' decision that the Wisconsin attorney general has authorization to represent a duly elected, tax paid, county judge is without any legal merit, has no basis in fact

or law and is accordingly groundless, thus resulting in a miscarriage of justice and denial of due process.

C. Right of Access to the Court.

Petitioners contend the Constitution for the United States of America, Amendment I, provides that the Congress of the United States shall make no law respecting . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievance. This clause has been recognized by the supreme Court of the United States long ago; to wit, *Crandall v. Nevada*, 6 Wall. 36 (73 U.S., XVIII., 745) concluding:

> "It is said to be the right of the citizen of this great country, protected by implied guaranties *[spelling is as in the case]* of its Constitution, 'to come to the seat of government, to transact any business he may have with it, to seek its protection, to share its office, to engage in administering its functions. He has the right of free access to its . . . courts of justice in the several States'."

and/or Article I, Section 9 of the Wisconsin Constitution:

> "Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without having to purchase it, completely and without denial, promptly and without delay, conformably to the laws."

Accordingly, the Constitution for the United States of America, et al., and Wisconsin Constitution provide for access to the courts of the several States, and, to petition for redress of grievance. Anything to the contrary is, notwithstanding, to wit, Article VI of the Constitution for the United States of America.

REQUEST FOR SANCTIONS

Petitioners move this court for "sanctions" in the amount of Ten Thousand Dollars ($10,000.00) against the respondents pursuant to Wis. Stats. §802.05(1)(b), §814.025(1), §814.025(2) and §814.025(3)(a)(b), as said respondents, being educated in the legal profession, knew or should have known, directly or indirectly, that their "opinion and orders" are not well grounded in fact and law, or warranted by existing law, or provides a "good faith" opinion, or has any reasonable bases in law or equity; that said "opinions and orders" are presented in "bad faith" as an attempt to delay adjudication of the facts of this case and impair the petitioners' "good faith" attempt to seek adjudication of their "Emergency Petition for Declaratory Judgment" in the court of appropriate jurisdiction in conformity to the law. Their decision is an astute consummation only as a means of enforcing their will, rather than the means, has no basis in fact or law and is accordingly groundless.

CONCLUSION

That the petitioners'/state's "Emergency Petition for Declaratory Judgment" filed in the constitutionally created circuit court of Crawford county, state of Wisconsin is the court of original and general jurisdiction within its geographical area; and, that a civil action filed in a constitutionally created state court, maintaining original and general jurisdiction, cannot be automatically bestowed to a congressionally created United States federal district court within the constitutional mandate of the provisions set forth herein under guise of a "Notice of Removal"; and, the judicial power of the United States shall be vested in one supreme Court for the sole purpose of adjudication of the reservations set forth in Article III, Section 2; and,

That the Wisconsin attorney general has no common-law, constitutional and/or statutory authorization to represent a duly elected, tax paid county employee as a matter of law; and,

That the petitioners/state have an absolute right of access to the courts of the several States for redress of grievance; and,

Sanctions are warranted against the respondents due to their gross negligence for their willful and deliberate attempt to perpetrate a fraud upon the petitioners/state.

RELIEF

(A) Petitioners/State request this Court to set forth findings of fact and conclusions of law to the directive of the respondents, forthwith and without any further delay, commanding said respondents to grant the petitioners'/state's Writ of Mandamus forthwith and without any further delay consistent with this Court's specific recommendation; and,

(B) Petitioners/State request this Court to set forth findings of fact and conclusions of law to the directive of the respondents, forthwith and without further delay, commanding said respondents to "strike" any and all pleadings filed by the Wisconsin attorney general on behalf of circuit court judge Michael T. Kirchman, due to lack of common-law, constitutional and/or statutory authority authorizing said representation; and

(C) Costs against the respondents in an amount to be made known to this Court by the petitioners/state after adjudication of this Petition for Writ of Error; and

(D) Sanctions in the amount of Ten Thousand Dollars ($10,000.00) against said respondents, jointly and severally, as joint tort feasors for good cause; and

(E) Any and all other relief this Court deems just and equitable.

Respectfully submitted this 30 day of ~~May~~ June, 1999. SLM

Steven L. Mantz, Petitioner,
appearing in his own
proper person

Debra L. Mantz, Petitioner,
appearing in her own
proper person

STATE OF WISCONSIN

CIRCUIT COURT

CRAWFORD COUNTY

State of Wisconsin ex rel.,
Steven L. Mantz, and
Debra L. Mantz, his wife

Petitioners,

v.

Harold D. Carpenter
acting agent for the Department of
Treasury-Internal Revenue Service

Respondent.

Case No. 98 CV 39

Emergency Petition
For Declaratory Judgment

Emergency Petition for Declaratory Judgment
Pursuant to Wisconsin Statute 806.04

Comes Now Steven L. Mantz and his wife Debra L. Mantz hereby and hereinafter petitioning this court for a Declaratory Judgment pursuant to Wisconsin Statute 806.04 with respect to parcels of land located in the **County of Crawford, State of Wisconsin.** The petitioners affirmatively state as follows:

Jurisdiction

This court has jurisdiction to determine its own jurisdiction, to wit, *Marbury v. Madison*, 1 Cranch 137 (1803), thus jurisdiction for a declaratory judgment is conferred upon this court pursuant to Wisconsin Statute 806.04.

That this court has jurisdiction over the petitioners and their rights; the petitioners real property and the status thereof; and the petitioners right of possession thereto, to wit, *Caha v. United States*, 152 U.S. 211, 215 (1894).

A prerequisite for implementing jurisdiction for declaratory judgment is conferred upon this court with service rendered upon the Wisconsin attorney general for the State of Wisconsin, to wit, *Bollhoffer v. Wolke*, 66 Wis.2d 144, 233 N.W.2d 902.

State jurisdiction and sovereignty is specifically set forth in Amendment X of the Constitution for the United States of America. In the Wisconsin State Constitution as Article II, Section 1 and Article IX, Section 2; and Chapter 1, Section 1.01 of the Wisconsin Statutes, to wit, *United States v. Bevans*, 16 U.S. 336, 338 (1818).

Jurisdictional challenges may be raised at any juncture during court proceedings, to wit, *Hagans v. Lavine*, 415 U.S. 533; and *Maine v. Thiboutoti*, 100 S. Ct. 2502; and *Bartus v. Department of Health and Social Services*, 176 Wis.2d 1082-1083, 501 N.W.2d 419-428 (1993).

SUMMARY OF REASONS FOR GRANTING A DECLARATORY JUDGMENT

Specifically, the Petitioners are seeking Declaratory Judgment with respect to the purchase of real properties, purchased exclusively by the Petitioners from Clarence E. Heisz on September 8, 1997. See the **Quit Claim Deed** attached herewith for this Court's edification as **Exhibit 1.**

The Petitioners seek declaratory relief in order to set at rest and/or in the alternative terminate any uncertainty or controversy which has risen in reference to the respondent utilizing the Petitioners' real properties for any alleged federal debt due and owing from Clarence E. Heisz.

STATEMENT OF FACTS

On September 8, 1997, the petitioners exclusively purchased the real properties set forth in Exhibit 1 from Clarence E. Heisz and made public record thereof by filing said **Quit Claim Deed** with the Register of deeds in Crawford County, State of Wisconsin as Document Number 255049, Volume 613, Page 171. At all time relevant to this action, Exhibit 1 is the real properties hereinafter in question, thus subject to declaring the petitioners' right of possession.

That at all time relevant to this petition, the Petitioners are within the jurisdiction of the State of Wisconsin. Their homestead is in the County of Washington, City of West Bend.

That at all times relevant to this petition, the Respondent is within the jurisdiction of the State of Wisconsin. The last known address of the Respondent, Harold D. Carpenter, is W9306 Gehri Road, in the County of Richland, City of Wonewoc.

That at all time relevant to this petition, the real properties purchased exclusively by the petitioners is within the jurisdiction of the County of Crawford, State of Wisconsin, thus within the jurisdiction of this court for purpose of adjudication.

The Petitioners received document(s) entitled "Notice of Seizure" and "Sealed Bid Sale" of which was set for December 16, 1997 in the basement of the Crawford County Jail in the City of Prairie du Chien, County of Crawford, State of Wisconsin. Said document made reference to the real properties in question allegedly owned by Clarence E. Heisz. Said notice indicates that said properties have been seized for non-payment of Internal Revenue taxes.

The Petitioners went to the Clerk of the United States District Court for the Western District of Wisconsin and requested a "Certificate of Search" for a fee of $15.00 to see if there is a "Seizure Warrant" and/or "Writ of Attachment" for said real properties in question against Clarence E. Heisz. Said certification

of search verified that said properties are not under seizure by "Order" of a United States District Court judge and said search revealed that there is not any civil or criminal actions or judgments filed against Clarence E. Heisz. This document is enclosed for your edification as "Exhibit 2".

The scheduled December 16, 1997 sale was called off by the Respondent after service was rendered upon the Respondent and the district director of the Department of Treasury – Internal Revenue Service, Fred G. Damaske, in the City of Milwaukee, State of Wisconsin, notifying them that Clarence E. Heisz no longer maintains any interest and/or possession of the real properties in question.

Petitioners again had been notified by the Respondent that the real property in question, which is owned exclusively by the Petitioners and in the possession thereof, is subject to a Sealed Bid Sale on March 24, 1998 for the purported federal debt of Clarence E. Heisz.

ARGUMENTS

(1) Under the laws of the State of Wisconsin, does Clarence E. Heisz maintain any interest in said real properties in question after the sale and transfer of said property in question was made to the Petitioners, thus subject to any collateral attack by the Respondent?

(2) Under the laws of the State of Wisconsin, does the Respondent retain any jurisdiction over the real property in question, owned exclusively by the Petitioners, to hold the Petitioners' real property for public sale for a purported federal debt of Clarence E. Heisz?

AUTHORITIES

The Petitioners contend that at all time relevant to this petition, they have acquired a secured interest in said real properties in question by paying Clarence E. Heisz a valuable consideration of $54,000.00 for the real properties in question pursuant to Wisconsin Statute 893.33(1).

That in the event the respondent claims any interest in said properties in question, directly or individually, Wisconsin state law affords the respondent the opportunity to seek relief against the Petitioner in a court of appropriate jurisdiction to state law, to wit, Chapters 801, 840, 842, 843, 844, 846, 847 and 895. That anything to the contrary constitutes a denial of due process.

CONCLUSION

Accordingly, as of September 8, 1997, Clarence E. Heisz no longer maintains any interest and/or right of possession in said properties. The sale and transfer of the real property in question, for a valuable consideration, granted the Petitioners an absolute

right of possession; and Clarence E. Heisz thereinafter diminished any and all interest in the real properties in question. The Petitioners maintain an absolute right of possession over the real properties.

That pursuant to Wisconsin state law, the respondent is afforded the opportunity to seek relief against the petitioners and/or Clarence E. Heisz within the statutory provisions of due process in a court of appropriate jurisdiction pursuant to Chapters 801, 840, 842, 843, 844, 846, 847 and 895.

That the respondent's "Notice of Seizure" and "Sealed Bid Sale" have no basis in fact or law and are accordingly groundless due to the fact Clarence E. Heisz no longer maintains any interest in the real properties in question; and the respondent has not acquired any interest in the real properties as set forth in "Exhibit 2".

Accordingly, Declaratory Judgment is warranted as there is no genuine issue to be disputed and that the petitioners are entitled to a Declaratory Judgment.

RELIEF

Petitioners move this court for the following relief:

(1) Declaratory Judgment in favor of the petitioners, declaring the real properties in questions, owned exclusively by the petitioners, to be free from any and all claims asserted by the

respondent, for any alleged federal debt of Clarence E. Heisz forevermore, forthwith and without any further delay.

(2) Declaratory Judgment in favor of the petitioners, declaring the petitioners to have and to hold their absolute right of possession to the real properties in question, free from any and all claims asserted by the respondent for any alleged federal debt of Clarence E. Heisz, forthwith and without any further delay.

(3) The cost of this action in the amount of $120.00.

(4) Compensatory Damages in the amount of $54,000.00

(5) Exemplary Damages in the amount of $100,000.00 to deter the respondent's willful and deliberate negligence.

(6) Any and all other relief this court deems just and proper.

Dated this 20th day of March, 1998.

Steven L. Mantz

Debra L. Mantz

cc: James Doyle (acting attorney general for the State of Wisconsin)
Fred G. Damaske (acting district director for the Dept. of Treasury – Internal Revenue Service)

Steven Mantz and Debra Mantz
758 Eastern Avenue
West Bend, Wisconsin 53095

CRAWFORD COUNTY COURTHOUSE
c/o Michael Kirchman (acting judge)
220 N. Beaumont Road
Prairie Du Chien, Wisconsin 53821

Registered Mail Number: R733 508 751

In Reference to Case Number 98-CV-39
Emergency Petition for Declaratory Judgment

Dear Mr. Kirchman:

I am in receipt of your personal directive dated April 23, 1998 in which you have indicated that said case has been removed to federal court and that no action will be taken by this Court.

Accordingly, this letter is sent to you via registered mail in an attempt to correct any misconception you may have in reference to a removal from a state court action to a federal court. An attempt has been made by a United States tax attorney from Washington D.C. to remove this case to federal court by the filing of a "Notice of Removal". Said filing does not constitute a removal, but merely an attempt to remove said action. Any attempt is strictly forbidden to wit *Title 28 U.S.C. 1359;* and/or in the alternative see the "Jurisdiction Statement" of said petition for the Supreme Court of the United States dictates in reference to exclusive jurisdiction.

Wherefore, I will give you 10 days from the time you receive this letter to address My petition. If said petition is not addressed, I will be forced to seek a Writ of Mandamus in the court of appeals to compel you to address said petition forthwith and without any further delay.

If I can be of any further assistance, please don't hesitate to contact me.

_____

Steven Mantz and Debra Mantz

cc: James Doyle

CIRCUIT COURT CHAMBERS
COURTHOUSE
CRAWFORD COUNTY

MICHAEL KIRCHMAN
CIRCUIT JUDGE

220 N. BEAUMONT RD
PRAIRIE DU CHIEN, WI 53821
(608) 326-0205

April 23, 1998

Steven and Debra Mantz
758 Eastern Avenue
West Bend, WI 53095

Re: Mantz v. Carpenter
Crawford Co. Case No. 98-CV-39

Dear Mr. and Mrs. Mantz:

I have received notice that this action has been removed to Federal Court. No action will be taken by this Court.

Sincerely,

Michael Kirchman
Circuit Judge

cc: LaQuita Taylor-Phillips
U.W. Dept. of Justice
P.O. Box 7238
Washington, CD 20044

COURT OF APPEALS
STATE OF WISCONSIN
DISTRICT IV

Case Number: _____

State of Wisconsin ex rel.,
Steven L. Mantz, and
Debra L. Mantz, his wife

Petitioners,

v.

Michael T. Kirchman
acting judge for Crawford County,

Respondent.

PETITION FOR A WRIT OF MANDAMUS

Steven L. Mantz
Debra L. Mantz
758 Eastern Avenue
West Bend, Wisconsin 53095
July 2nd 1998

Comes Now, the Petitioners, ***State of Wisconsin ex rel, Steven L. Mantz and his wife Debra L. Mantz,*** appearing in their own and proper person and hereby and hereinafter invoking the

jurisdiction of this court to issue a **Writ of Mandamus** to the duly elected circuit court judge of Crawford County, Michael T. Kirchman to come to judgment in reference to petitioner's **"Emergency Petition for Declaratory Judgment"** forthwith and without any further delay in conformity with the laws of the state of Wisconsin.

Jurisdictional Statement

Jurisdiction is conferred upon this court pursuant to the **Wisconsin Constitution to wit Article VII, Section 5, Sub 3.** Mandamus lies only to compel performance of specific duties imposed by law, to wit *Eisenberg v. DILHR*, 59 Wis. 2d 98 (1973); said duty must be free and clear of doubt to wit *St ex rel Madison v. Walsh*, 247 Wis. 317 (1945).

This court has jurisdiction to determine its own jurisdiction to wit *Marbury v. Madison*, 5 U.S. 137 (1803).

Statement of Facts

On **March 23, 1998** the petitioners filed with the clerk of court of Crawford County a document entitled **"EMERGENCY PETITION FOR DECLARATORY JUDGMENT"**. A fee of $180.00 was charged for said filing and case number 98-CV-39 was attached thereto. Said petition, receipt and docket sheet is attached herewith as ***Exhibit A, B and C*** for this court's edification.

On **April 23, 1998** the petitioners set forth a letter to the respondent requesting a time and date certain for adjudication of their petition. Said letter is attached herewith as ***Exhibit D*** for this court's edification.

On **April 23, 1998** the respondent sent a letter, to the petitioners, indicating that said case has been removed to federal court. Said letter is attached herewith as ***Exhibit E*** for this court's edification.

Statement of Issue

Whether the trial Court has a legal duty as an officer of the court pursuant to the Constitution for the United States of America as found in Article VI and Amendments I and V; and/or Wisconsin Constitution as found in Article I, Section 1, 2, 3, 4, 5, 11, 14, 22, and 21 sub 2; and/or Wisconsin Statutes Chapter 799-847 to proceed with the petitioner's ***Emergency Petition*** duly filed in the circuit court in the County of Crawford to insure that the ends of justice will be met and that the Petitioners will be afforded their opportunity to be heard and opportunity to seek relief in conformity to the due process clause of the First and Fifth Amendment.

Due Process of Law and Redress of Grievance

The Petitioners contend that at all times relevant to this petition, that the creators of this great nation and State have maintained to all a constitutional right of redress of grievance and

constitutional right of access to the court as set forth in ***Amendment I of the Constitution for the United States of America***. That said right is also within the construction of the ***Wisconsin Constitution*** to wit *Article I, Section 1, 3, 4, 9, 11,* and, further recognized by the ***Wisconsin legislature*** to wit ***Chapters 799-847 of the Wisconsin Statutes***.

The right to petition the government for redress of grievance and right of access to the court and due process dates back to the very creation of this nation. The Supreme Court of the United States concluded in *Crandall v. Nevada*, 6 Wall., 36 (37 U.S., XVIII., 745):

> "It is said to be the right of the citizens of this great country, protected by implied guaranties of its Constitution, to come to the seat of government, to transact any business he may have with it, to seek its protection, to share its office, to engage in administering its functions. He has the right of free access to it . . . courts of justice in the several States."

That said right of access to the court is absolute, *United States v. Hylton*, 710 F.2d 1106 (5th Cir. 1983); That they retain an absolute right to be heard in one's own behalf, *In Re Hovey v. Elliott*, 167 U.S. 409, 417; That they have an absolute right of due process of law, to wit *Hurtado v. California*, 110 U.S. 516, quoting:

> "Due process of law is to be defined by recourse to those fundamental principals of liberty and justice which lie at the base of all our civil and political institutions."

That due process is a remedy utilized to seek relief against an individual who has violated your right to life, liberty, or, property, to wit *State ex rel., Hoel v. Brown*, 105 Ohio 479, 1 Ohio Abs. 230, 138 N.E. 230, quoting:

> "Probably no other phrase known to the American and English law comprehends so much basically vital in the protection of human rights and the redress of human wrongs as the phrase due process of law."

The Petitioners contend that their Petition is within the constitutional morphology as set forth by the Supreme Court of the United States as found in *Marbury v. Madison*, 5 U.S. 137 (1803), quoting:

> "Where individual rights depend on a duty established by law, there is a remedy that must be judicially enforced to protect the injured party."

Conclusion

Accordingly, this Petition for Writ of Mandamus and the contents there of is self evident. At all times relevant to this petition, the circuit court of Crawford County maintains ***original and exclusive jurisdiction*** over the real property and parties in question, and the judge thereof has a legal duty pursuant to the

First and Fifth Amendments of the Constitution for the United States of America, and/or Wisconsin Constitution, and/or Wisconsin Statutes to afford the petitioners due process and right of access to the courts, forthwith and without any further delay, in conformity to the laws of the State of Wisconsin.

Relief

Petitioners seek the following relief:

(a) For this Court to issue a **WRIT OF MANDAMUS** to the respondent, ordering the respondent to come to judgment forthwith and without any further delay; and/or

(b) For this Court to issue an **ORDER TO SHOW CAUSE** why said writ should not issue forthwith and without any further delay; and/or

(c) Any and all other relief this court deems just and proper.

Dated this 13 day of July, 1998.

Steven L. Mantz

Debra L. Mantz

COURT OF APPEALS
STATE OF WISCONSIN
DISTRICT IV

Case Number: 98-2000-W

State of Wisconsin ex rel.,
Steven L. Mantz, and,
Debra L. Mantz, his wife

Petitioners,

v.

Circuit Court Case Number
98-CV-39

Michael T. Kirchman
acting Judge for Crawford County,

Respondent.

Motion to Strike James E. Doyle's Purported Pleading Entitled "RESPONSE OF CIRCUIT JUDGE MICHAEL T. KIRCHMAN TO PETITION FOR WRIT OF MANDAMUS", and, Motion for Sanctions

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Notice Is Hereby Given that the Petitioners, *State of Wisconsin ex rel., Steven L. Mantz and Debra L. Mantz,* hereinafter move this court to "strike" acting attorney general James E. Doyle's purported pleading pursuant to 802.06(6) and 802.03(2) of the Wisconsin Statutes in their entirety, and, request "sanctions" against acting attorney James E. Doyle, et al., pursuant to

Wisconsin Statute 802.05(1)(b), 814.025(1), 814.025(2), 814.025(3)(a)(b). Petitioners state as follows:

I. Alteration of Caption

Acting attorney general James E. Doyle's purported pleading sets forth a respondent by the name of CIRCUIT COURT FOR CRAWFORD COUNTY. The Petitioners have not brought suit against the named party in the purported response set forth by the acting attorney general James E. Doyle. Said suit involves a private individual exclusively by the name of Michael T. Kirchman as a respondent. See Writ of Mandamus for reference thereto.

II. Limited Duties of Attorney General

The Petitioners contend that the duties of the acting attorney general James E. Doyle are set forth in Chapter 165 of the Wisconsin Statute and specifically spelled out in *Van Alstyne, Roberts*, 1974 WLR 721. That the duties thereof **does not** consist of:

(a) Private representation of any tax paid, duly elected county officer; and/or,

(b) Private representation of individuals in which the STATE OF WISCONSIN is a party thereof, directly or indirectly; and/or,

(c) Private representation of individuals in which the STATE OF WISCONSIN is a party thereof, directly or indirectly, thus creating a conflict of interest.

I. The State/Petitioners are a Party to this Action

The Petitioners contend that upon the filing of their "Emergency Petition for Declaratory Judgment" *State ex rel.*, they have invoked the sovereign powers of the State. That this proceeding is instituted in the name and behalf of the State, but on the information and at the instigation of an individual who has a private interest in the matter. That the acting attorney general James E. Doyle was duly served via certified mail, number Z 097402 202 on March 23, 1998 with said Petition. *See Emergency Petition for Declaratory Judgment for reference thereto.*

IV. Jurisdiction

It is well established law that the State maintains any and all jurisdiction, directly or indirectly, over the person and property in question, to wit *Pennoyer v. Neff*, 95 U.S. 714 (1878). The high Court concluded in reference thereto:

> "One of the principles is, that every state possess exclusive jurisdiction and sovereignty over persons and property with its territory."

The Petitioners' "Emergency Petition for Declaratory Judgment" is self supporting in reference to implementing jurisdiction. The United States district court does not simply confer jurisdiction by the filing of a "Notice of Removal" by a litigant and/or his attorney. Jurisdiction is a prerequisite for adjudication, to wit *Hartford v. Davis*, 163 U.S. 273;

> "There is no presumption in favor of jurisdiction, and the basis for jurisdiction must be affirmatively shown."

It is well established law that *federal jurisdiction* cannot be assumed, but must be clearly shown, to wit *Brooks v. Yawkey*, 200 F.2d. 633; and a court lacking jurisdiction cannot render judgment, but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking, to wit *United States v. Siviglia*, 686 F.2d. 835 (1981). Anything to the contrary is arbitrary and liability is warranted.

Accordingly, the Petitioners move this court to "strike" the purported pleading set forth by acting attorney general James E. Doyle, et al., as said pleading has no basis in fact or law and is accordingly groundless.

Additionally, Plaintiff moves this court for "sanctions" in the amount of $5,000.00 against acting attorney general James E. Doyle, et al., pursuant to Wisconsin Statute 802.05(1)(b), 814.025(1), 814.025(2), 814.025(3)(a)(b) as said acting assistant attorney general for over thirty years, James H. McDermott knew or should have known, directly or indirectly, being educated in the legal profession that his "purported pleading" is not well-grounded in fact or law, or, warranted by existing law, or, provides a "good faith" argument, or, has any reasonable bases in law or equity; that said "purported pleading" is presented in "bad faith" as an attempt

to delay adjudication of the facts in this case and impair the Petitioners' "good faith" attempt to seek due process in a court of competent jurisdiction. It is fit and proper to do so as to deter such frivolous and fictitious pleading from being submitted in this court in an attempt to obstruct justice and infringe upon the integrity of the courts of this State.

Dated this 30th day of the Seventh Month, 1998.

Steven L. Mantz

Debra L. Mantz

Affidavit of Mailing

Notice is hereby given that service, via United States Mail has been rendered to James E. Doyle, et al., and, Court of Appeals on this 30th day of July, 1998.

Steven L. Mantz

DISTRICT IV
Office of the Clerk
COURT OF APPEALS
110 E. MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Marilyn L. Graves
Clerk

August 11, 1998

To:

Donna M. Steiner,
Trial Court Clerk
220 N. Beaumont Street
Prairie du Chien, WI 53821

J. Denis Moran
Director of State Courts
P.O. Box 1688
Madison, WI 53701-1688

Hon. Michael Kirchman
Crawford County Courthouse
220 N. Beaumont Street
Prairie du Chien, WI 53821

Steven L. Mantz
758 Eastern Avenue
West Bend, WI 53095

Debra L. Mantz
758 Eastern Avenue
West Bend, WI 53095

James H. McDermott
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

You are hereby notified that the Court has entered the following opinion and order:

98-2000-W SXR Steven L. Mantz et al. V. Circuit Court for Crawford County and the Hon. Michael T. Kirchman, presiding
(L.C. #98-CV-39)

Before Dykman, P.J., Vergeront and Deininger, JJ.

Steven and Deborah Mantz petition for a writ of mandamus compelling the circuit court to act upon a petition for "emergency declaratory judgment" which they filed in Crawford County Case No. 98-CV-39. The petition requested that Internal Revenue Service agent Harold Carpenter be enjoined from executing a Sealed Bid Sale of certain real property, in which the Mantzes apparently held an interest, in order to satisfy the federal tax debt of a third party. The respondent, Judge Michael T. Kirchman, has provided this court with documents showing that, on April 6, 1998, notice of the removal of case no. 98-CV-39 to federal court was filed in the circuit court and served upon the parties, and that, on July 13, 1998, the district court dismissed the case on the merits. Federal law provides that, upon receiving notice of the removal of an action from state to federal court, "the state court shall proceed no further, unless and until the case is remanded." 28 U.S.C. § 1446(d). Therefore, the circuit court properly refused to take further action with regard to the Mantzes' petition for injunctive relief. There is no basis for this court to exercise its supervisory authority. *See State ex re. Dressler v. Circuit Court*, 163 Wis.2d 622, 630, 472 N.W.2d 532, 536 (Ct. App. 1991).

IT IS ORDERED that the petition for a writ of mandamus is denied.

Marilyn L. Graves
Clerk of Court of Appeals

DISTRICT IV
Office of the Clerk
COURT OF APPEALS
110 E. MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Marilyn L. Graves
Clerk

August 19, 1998

To:

Donna M. Steiner,
Trial Court Clerk
220 N. Beaumont Street
Prairie du Chien, WI 53821

J. Denis Moran
Director of State Courts
P.O. Box 1688
Madison, WI 53701-1688

Hon. Michael Kirchman
Crawford County Courthouse
220 N. Beaumont Street
Prairie du Chien, WI 53821

Steven L. Mantz
758 Eastern Avenue
West Bend, WI 53095

Debra L. Mantz
758 Eastern Avenue
West Bend, WI 53095

James H. McDermott
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

You are hereby notified that the Court has entered the following opinion and order:

98-2000-W SXR Steven L. Mantz et al. V. Circuit Court for Crawford County and the Hon. Michael T. Kirchman, presiding
(L.C. #98-CV-39)

Before Dykman, P.J., Vergeront and Deininger, JJ.

Steven and Debra Mantz move to strike the response in opposition to their petition for a writ of mandamus. Because we have already issued an order denying their petition, we will treat the submission as a request for reconsideration.

The Mantzes contest the attorney general's authority to respond on behalf of the Circuit Court for Crawford County, Judge Kirchman, presiding, on the basis that they named the judge as a respondent in his individual capacity, rather than his official capacity. As we previously advised the petitioners, however, mandamus is only available to compel public officials to perform their public duties. ***State ex re. Dressler v. Circuit Court***, 163, Wis.2d 622, 630, 472 N.W.2d 532, 536 (Ct. App. 1991). As Judge Kirchman would clearly have no duty to act upon the Mantzes' petition in his private capacity, mandamus would not lie at all unless the judge were named in his official capacity.

IT IS ORDERED that the request for reconsideration is denied.

Marilyn L. Graves
Clerk of Court of Appeals

Office of the Clerk
SUPREME COURT
110 E. MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

TELEPHONE (608) 266-1880
FACSIMILE (608) 267-0640

December 8, 1998

To:

Hon. Michael Kirchman
Crawford County Circuit Court
220 N. Beaumont Street
Prairie du Chien, WI 53821

J. Denis Moran
Director of State Courts
P.O. Box 1688
Madison, WI 53701-1688

Steven L. Mantz
758 Eastern Avenue
West Bend, WI 53095

Debra L. Mantz
758 Eastern Avenue
West Bend, WI 53095

James H. McDermott
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

You are hereby notified that the Court has entered the following opinion and order:

98-2000-W SXR Steven L. Mantz et al. V. Circuit Court for Crawford County and the Hon. Michael T. Kirchman, presiding
(L.C. #98-CV-39)

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of the petitioners, State of Wisconsin ex re. Steven L. Mantz and Debra L. Mantz, and considered by the court,

IT IS ORDERED that the petition for review is denied, without costs.

Marilyn L. Graves
Clerk of Supreme Court